plaintiff's customers whilst in the plaintiff's business to detach those customers therefrom, I have felt more doubt. On the evidence, however, I do not think that the nature of the defendant's employment was such that he was brought into that personal touch with the customers of the business as would put him in a position to so detach them. I accept his evidence that he did not act as a canvasser, and seldom saw the customers of the business. The employment of the manager of a mineral water manufactury is a very different one to that of the managing clerk of a solicitor, which was the employment under discussion in *Fitch* v. *Dewes* 1921 A.C. 158, and in the ordinary way such a manager would appear to be unlikely to acquire special personal influence over the customers of the business.

The plaintiff has therefore failed to satisfy me that there exist in the present case any special circumstances to take the agreement out of the general rule avoiding covenants in restraint of trade. I must therefore refuse the injunction asked for, and dismiss the action with costs.

From this Judgment the plaintiff appealed and the Appeal was heard on the 20th November 1924 by Whitley, J. (presiding), Barrett-Lennard and Acton, JJ. The grounds of appeal were that:—

1. The Learned Chief Justice was wrong in finding that there were no trade secrets in the appellant's business which required to be protected and that the respondent acquired no special knowledge other than what he could have acquired in any properly conducted business of the same character and that he did not acquire any special relationship with the customers of the business,
2. The learned Chief Justice was wrong in placing the onus of proof of reasonableness of the agreement on the plaintiff in the action.
3. The learned Chief Justice was wrong in holding the restriction was not reasonable in reference to the interests of the parties concerned and of the public.

Their Lordships delivered oral judgments upholding the decision of the Court below.

Knowles (*Laycock* with him), for the appellant.

G. S. Carver, for the respondent.

Solicitors for the appellant—

Braddell Brothers.

Solicitors for the respondent—

Donaldson & Burkinshaw.

[APPELLATE CIVIL JURISDICTION]

CHEAH LEONG KEAH—Plaintiff
(Respondent)

vs.

MYDIN BIN TAMBY BAPPOO—Defendant.
(Appellant)

[PENANG DISTRICT COURT SUMMONS No. 459 OF 1932]

[DISTRICT COURT APPEAL No. 8 OF 1932.]

Court—District Court—Jurisdiction—landlord and tenant—Court Ordinance S. 43 (1).

In an action for recovery of possession it was proved that the person in possession was a tenant at will of the original owner of the property and, upon the transfer of the property, was a tenant at sufferance of the subsequent owner.

Held, that there being the necessary relationship of landlord and tenant under S. 43 (1) Courts Ordinance and no *bona fide* question of title being involved, the action was rightly brought in the District Court.

The facts can be summarised shortly as follows:—

L. M. M. Meyapah Chetty purchased some land, including Lot 231 T.S. IX N.E.D. Penang in April 1929, and in July 1929 he executed a promissory note in favour of Cheah Leong Keah, the plaintiff, upon which he had endorsed a memorandum stating that the title deeds of certain property, including Lot 231, had been deposited with the plaintiff with intent to create an equitable mortgage thereof for securing repayment of the principal sum and interest due upon the promissory note. On the 30th September, 1929 L.M.M. Meyapah Chetty signed a document in the following terms:—

> "I L. M. M. Meyapah Chetty hereby agree with T. B. Mydin of Trusan Road, Penang as follows: In consideration of valuable services rendered by you in connection with the landed property at Sungei Pinang of my principal I agree on behalf of my principal to convey free in your favour or in the name of your son Osman the Lot 231 T.S. IX Penang free absolutely."
>
> "This gift being subject to the completion of the suit in respect of Lot 81 T.S. IX also if this suit prove unfavourable to the plaintiff in this suit then the above gift will be reduced to only payment of $650 and costs of the building erected by you on the said lands."

It appears that the plaintiff therein referred to was L. M. M. Meyapah Chetty who in all these proceedings was acting as attorney of S. M. S. Letchumanan Chetty in whose name the land was standing. The suit did prove unfavourable to the Chetty. It was not disputed that the defendant had built the house No. 128 Trusan Road on the land. The exact terms on which he did so were never disclosed. The house appears to have been built in 1928. Early in 1931 the plaintiff applied to the Court for a declaration that he was to be parties intended that the house should be immoveable property. The agreement is to the effect that the Chetty would either transfer the land (and

considered as mortgagee of the property and obtained an order for sale and leave to bid at the auction. At the auction he bought the property and in May 1931 negotiations began between the plaintiff and the defendant. The result of these negotiations was that the defendant was allowed to occupy the premises pending an agreement as to the amount of rent which has to be paid.

The claim in this action was for:—

(1) Recovery of possession of the property in question,
(2) Recovery of $100 arrears of rent, and
(3) Mesne profits from date of determination of tenancy until date of delivery of possession.

The defendant resisted the claim on the ground that the District Court had no jurisdiction to try the action which was for the recovery of immoveable property.

Price, for the Plaintiff.

Tan Cheng Hock, for the defendant.

The District Judge Mr. Bassett delivered the following grounds of judgment:—

"In this suit the defendant raised the preliminary point that there was no jurisdiction in the District Court to decide the suit. This proposition was based on two grounds.

(1) That there was no relationship of landlord and tenant within the meaning of section 43 (1) Courts Ordinance.
(2) That there was a *bona fide* question of title involved.

"The case of *Koffman* v. *Sunshine and another* W.N. December 5th, 1931 at page 265 was quoted by the Plaintiff. I did not think that that was an analogous case but ruled that before I could decide the question of jurisdiction I must hear the evidence. Having heard the evidence I decided that there was the necessary relationship of landlord and tenant under Section 43 (1) Courts Ordinance and that there was no *bona fide* question of title involved. After hearing the evidence I came to the conclusion that the Defendant's claim to the house was a sham, without merits at all and could not be considered a *bona fide* claim. I ruled therefore that the Court had jurisdiction and gave judgment for the Plaintiff.

"It was extremely difficult to understand clearly what the Defendant's claim was.

"At one time he argued that the house was immoveable property and that the Court had no jurisdiction and alternatively he argued that the house was moveable property.

"After hearing the evidence of Mr. Thorpe and examining the plan it seemed to me indisputable that the house was immoveable property. The house was built with a kitchen which had a concrete floor and undoubtedly to remove it would have meant either partitioning the house or digging up this cement floor. Again turning to the agreement with the chetty upon which the Defendant based his claim it seemed that even then the so give the Defendant a good title to the house) or if unable to transfer the land would give him a sum of money plus compensation for building the house. I found that the Defendant therefore was a tenant at will of the Chetty. When the Chetty conveyed the house and land to the Plaintiff he became a tenant at sufferance of the Plaintiff.

"I held that this would have been sufficient relationship to satisfy the requirements of Section 43 (1) Courts Ordinance but in fact I found that the Plaintiff had allowed Defendant to occupy the house and land pending an agreement as to the amount of rent and that Defendant had thus become a tenant at will. On these grounds I decided that the Court had jurisdiction and gave judgment for the Plaintiff in terms of paragraph 1 of claim and sum of $40 under paragraph 3 of claim."

Solicitors for the Plaintiff—
Presgrave and Matthews.
Solicitor for the Defendant—
Ong Huck Lim.

From the above Judgment the defendant appealed to the Court of Appeal, consisting of Murison C. J., Prichard and Terrell, JJ. who unanimously dismissed the appeal.

[CRIMINAL APPELLATE JURISDICTION]

HO CHICK KWAN (Appellant)

vs.

1. THE HON'BLE, THE BRITISH RESIDENT, SELANGOR

2. THE GAOLER, PUDU GAOL, KUALA LUMPUR (Respondents).

[SELANGOR CRIMINAL APPEAL No. 43 OF 1931]
[K. L. MISCELLANEOUS CRIMINAL APPLICATION No. 11 of 1931]

Banishment—arrest and detention—legality of Order of the Resident—competency of the Court to investigate—conflict of laws—nationality—subject of Ruler of Negri Sembilan domiciled in Selangor—whether a subject of the Federated Malay States—Banishment Enactment, 1910, S. 3; Criminal Procedure Code, Ss. 363 & 373; Treaty of Federation, 1895; Naturalisation Enactment, 1904.

The Resident of a Federated Malay State is vested with powers of arrest and detention under the Banishment Enactment. Before these powers could be exercised he is bound to take the required preliminary steps necessary for the creation of those powers. Once it is satisfied that those steps have been lawfully taken, the Court is *functus officio.*

A natural-born subject of the Ruler of State of Negri Sembilan cannot be regarded as a natural-born subject of the ruler of any other state in the Federation.

The appellant, who was detained in the Pudu goal, Kuala Lumpur undor the Banishment Enactment applied to be set at liberty. The application made by way of motion was for an order in the nature of a *Habeas Corpus.*